IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 160 OF 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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KHERALU TALUKA PANCHAYAT - Appellant(s)
Versus
KUNVARBEN WD/O.DALJIBHAI JESANGBHAI - Respondent(s)

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Appearance :
SHRI PRAKASH K. JANI for Appellant(s).
None for Respondent though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/01/2007

ORAL JUDGMENT

1. The short facts necessary for disposal of the Second Appeal are that the plaintiff (since deceased) had purchased certain Indian lemon plants from the appellant-

Taluka Panchayat, nursed the same for a period of three years with the high hopes that he will get fruits of the required and desired quality. However, to his shock and surprise, the Indian lemon plants, which could provide better taste fruits, were loaded with Italian lemon, which is not ordinarily used by the general public. He, being dissatisfied with the action of the Panchayat in selling the plants to him, filed a suit for recovery of damages. Before filing the suit, he had issued a notice under Section 320 of the Gujarat Panchayat Act, 1961 (“the Act” for short) in the name of the Taluka Development Officer. The same was received by the Taluka Development Officer, but, he even at that time did not inform the plaintiff that the notice was issued to a wrong person and it was required to be issued to the Taluka Panchayat and could be served upon the said Taluka Development Officer.

1.1 After the notice, the Taluka Panchayat appeared before the learned trial Court and raised various contentions submitting, *inter alia*, that present was not a case for awarding damages and in view of inappropriate notice to the Panchayat under Section 320 of the Act, the suit was liable to be dismissed, but, the learned trial Court, after hearing the parties, decreed the suit to the

tune of Rs.18,822.25 with costs and interest at the rate of 9% per annum.

1.2 The Taluka Panchayat, being aggrieved by the same, preferred a Regular Civil Appeal, which was partly allowed and the decree was modified to the tune of Rs.9,172.25 with costs and running interest at the rate of 9% per annum. The question of legal notice was, however, decided against the interest of the appellant. Still being dissatisfied, the Taluka Panchayat is before this Court.

2. The appeal has been admitted for hearing the parties on the following question of law:

> *"Is notice addressed to the Taluka Development Officer on behalf of the Taluka Panchayat a valid notice for the purpose of Sec. 320 of the Gujarat Panchayat Act, 1961?"*

3. Even before I enter into the controversy raised before me, I must observe that to save the sum of Rs.18,000/-, as awarded by the learned trial Court, or the sum of Rs.9,172.25, the appellant must have spent more than the sum of Rs.9,000/- by now. The people, who are in the control of the public money, should always see

that whether it is better to settle the dispute so that some money is saved or would it be prudent just for the sake of nothing to enter into a long-drawn litigation, which may invite unnecessary expenses. In a case like the present, the appellant could certainly settle the dispute with its own residents, who were residing within the area of the Taluka Panchayat, but, unfortunately, some bureaucrat or some representative of the public, who was occupying a high office in the Taluka Panchayat, took it to be a question of prestige and went on into the litigation.

The Supreme Court in some of the cases has observed that in the cases like the present where the matters can be settled, the authority should not enter into unnecessary disputes. Be that as it may.

4. Shri Jani, learned Counsel for the appellant, submits that in accordance with Section 320 of the Act, a notice is required to be issued to the Taluka Panchayat and the same can be served upon the Taluka Development Officer, who happens to be the Secretary-cum-Chief Officer of the said Panchayat. His submission is that from Exh.50, it would appear that notice had been issued to the Taluka Development Officer; according to him, such

notice would not meet with the requirements of Section 320 of the Act.

5. True it is, that the notice has not been issued in the name of the Panchayat, but, the same has been served upon the Principal Officer-cum-Secretary of the Taluka Panchayat.

6. A fair understanding of the notice would make it clear that all the claims were made against the Panchayat and there was no scope for any confusion. Simply because of wrong description of the party, it cannot, at this stage, be observed that the notice issued to the Taluka Development Officer would not meet with the requirements of Section 320 of the Act.

7. The appeal deserves to and is, accordingly, dismissed. No costs. Let a decree be framed accordingly.

[R.S.Garg, J.]

*kamlesh**